

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Vaya Telecom, Inc. for Declaratory)	CC Docket No. 01-92
Ruling Regarding LEC-to-LEC VoIP Traffic)	
Exchanges)	
)	

OPPOSITION OF FRONTIER COMMUNICATIONS CORPORATION

Frontier Communications Corporation (“Frontier”) hereby submits the following comments in opposition to Vaya Communications’ Petition for a Declaratory Ruling (“*Petition*”) regarding LEC-to-LEC VoIP traffic exchanges.¹ Frontier, which operates a telecommunications network across 27 states, is the largest provider of communications services focused on rural America. Accordingly, Frontier is committed to doing its part to deploy broadband in furtherance of the Commission’s broadband deployment goals.² To this end, Frontier is investing hundreds of millions of dollars to deploy broadband in predominantly rural areas; the areas that the Commission found are most likely to lack service.³ Frontier is able to make such significant

¹ See Pleading Cycle Established for Comments on Vaya Telecom Petition for Declaratory Ruling Regarding LEC-to-LEC VoIP Traffic Exchanges, *Public Notice*, CC Dkt. No. 01-92, DA 11-1561 (rel. Sep. 20, 2011) (“*Public Notice*”).

² *In re*: Joint Statement on Broadband, GN Docket No. 10-66, *Joint Statement on Broadband*, 25 FCC Rcd. 3420 (rel. Mar. 16, 2010) (“Every American should have a meaningful opportunity to benefit from the broadband communications era—regardless of geography, race, economic status, disability, residence on tribal land, or degree of digital literacy.”) (“*Joint Statement*”).

³ *In re*: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act; A National Broadband Plan for Our Future, GN Docket Nos. 10-159; *Seventh Broadband Deployment Report*, FCC 11-78 at ¶ 4 (rel. May 20, 2011) (“The fact remains, however, that too many Americans remain unable to fully participate in our economy

investment in rural broadband thanks to a financial framework that combines sound business decisions, shareholder support, payments from other carriers utilizing our infrastructure (intercarrier compensation), and indirectly, USF support. Granting Vaya's *Petition* would undermine Frontier's ability to continue its broadband deployment because it would seriously threaten intercarrier compensation stability.

The Federal Communications Commission ("Commission" or "FCC") should deny the *Petition* because it: (1) lacks merit and distorts current realities; (2) would serve to exacerbate the arbitrage problems that already plague intercarrier compensation; (3) does not help foster the comprehensive intercarrier compensation reform that the Commission currently seeks.

The *Petition* asks the Commission to turn years of Commission precedent and industry practice on its head by declaring that "a LEC's attempt to collect intrastate access charges on LEC-to-LEC VoIP traffic exchanges is an unlawful practice."⁴ While Frontier strongly disputes the *Petition*'s view of how access charges should be assessed on this traffic, the primary reason the Commission should deny the *Petition* is because it would create further arbitrage opportunities at a time when the Commission seeks to eliminate arbitrage. In its February 2011, *Notice of Proposed Rulemaking*,⁵ the Commission recognized that the current intercarrier compensation regime enables various opportunities for arbitrage and stated that, "[t]he comprehensive intercarrier compensation reforms on which we seek comment in this Notice would, if adopted, significantly reduce and eventually eliminate opportunities and incentives for

and society because they lack broadband. Although this is a nationwide concern, the situation is particularly bleak for Americans in rural and Tribal areas.").

⁴ *Petition* at 1.

⁵ *In re: Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109; GN Dkt. No. 09-51; CC Dkt. Nos. 01-92, 96-45, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 11-13 (rel. Feb. 9, 2011) ("*NPRM*").

arbitrage.”⁶ As part of this effort the Commission asked numerous questions about the application of access charges to VoIP traffic.⁷ Notably the Commission did not propose the changes for which Vaya petitions as part of a comprehensive solution.

While the *Petition* presents a new nuance to the question of VoIP intercarrier compensation, the arbitrage danger presented if Vaya’s *Petition* were granted is a different strand of the same problem that Frontier noted when considering a separate and distinct rate for VoIP in response to the *NPRM*:

Frontier cannot identify whether the traffic it receives originates as either VoIP traffic or traditional switched access traffic nor is there a simple technical solution that would enable it to do so. Accordingly, the potential for arbitrage abounds should the Commission find that VoIP-originating traffic is not subject to traditional terminating access charges. . . . If the Commission chooses to adopt any rate for VoIP traffic other than the intercarrier compensation rates that apply to other voice services, it will create a new arbitrage opportunity as carriers will undoubtedly begin claiming that significant portions of their traffic terminating on Frontier’s network are VoIP-originated. As stated above, Frontier will not be able to disprove these assertions. Therefore, if the Commission chooses to adopt either a bill-and-keep⁸ or some arbitrarily nominal rate,⁹ Frontier will be unable to recoup any meaningful intercarrier compensation for a large and growing number of minutes.¹⁰

The excerpt above is a fraction of Frontier’s comments on the issue of how separate VoIP rates threaten the intercarrier compensation system; Frontier incorporates the rest of its arguments in its *NPRM* comments and reply comments by reference.¹¹ In the *Public Notice* seeking comment on Vaya’s *Petition*, the Commission astutely notes that “the issue raised in Vaya’s petition, the treatment of VoIP for purposes of intercarrier compensation, is an issue that

⁶ *Id.* at ¶ 603.

⁷ *Id.* at ¶¶ 612-19.

⁸ *NPRM* at ¶ 615.

⁹ *Id.* at ¶ 616.

¹⁰ Section XV Comments of Frontier Communications Corp., WC Dkt. Nos. 10-90, 07-135, 05-337, 03-109; GN Dkt. No. 09-51; CC Dkt. Nos. 01-92, 96-45 (filed Apr. 1, 2011).

¹¹ *See generally id.*

the Commission is already considering” as a result of the *NPRM*.¹² Indeed, almost all of the macro issues that the *Petition* raises have been briefed in these dockets response to the *NPRM* in both comments and reply comments, and the issue had been raised in this docket long before the *NPRM*.¹³

The Commission should not let the *Petition*’s method of dressing an old issue in new clothing deter it from its goal of holistic intercarrier compensation reform. The Commission has before it now the America’s Broadband Connectivity Plan (“ABC Plan”),¹⁴ which provides a rational framework for modernizing all aspects of intercarrier compensation. The ABC Plan provides a specific path forward for VoIP-originating traffic terminating on the PSTN that provides an equitable glidepath for harmonizing intrastate and interstate access rates for all traffic and further reducing those rates in lockstep with all traffic.

Chairman Genachowski has announced his intention to proceed with comprehensive intercarrier compensation reform this month. Specifically, the Chairman noted that the anticipated reform, “will provide certainty going forward about the compensation for VoIP calls that either begin or end on the public switched telephone network, ensuring symmetry in the treatment of such traffic.”¹⁵ It is no coincidence that the Chairman discussed these changes in the immediate context of correcting other arbitrage opportunities like phantom traffic and traffic pumping. Granting Vaya’s *Petition* at this juncture would create the very arbitrage the

¹² *Public Notice* at 1.

¹³ *NPRM* at ¶ 610 (“Since 2001, the Commission has sought comment in various proceedings on the appropriate intercarrier compensation obligations associated with telecommunications traffic that originate or terminate on IP networks.”).

¹⁴ See Letter from Robert W. Quinn, Jr., AT&T; Steve Davis, CenturyLink; Michael T. Skrivan, FairPoint; Kathleen Q. Abernathy, Frontier; Kathleen Grillo, Verizon; and Michael D. Rhoda, Windstream; to Marlene H. Dortch, FCC, CC Docket Nos. 01-92, 99-200, 96-98, 99-68, 96-45; WC Docket Nos. 05-337, 07-135, 10-90, 03-109, 06-122, 04-36; GN Docket No. 09-51 (filed July 29, 2011).

¹⁵ Julius Genachowski, Chairman, Fed. Comm’n’s Comm’n, FCC Address, “Connecting America: A Plan To Reform and Modernize the Universal Service Fund and Intercarrier Compensation System” (Oct. 6, 2011).

Commission seeks to avoid. In contrast, adopting the ABC Plan's proposal for intercarrier compensation reform would eliminate the arbitrage opportunity, moot Vaya's petition, and eliminate the innumerable disputes and confusion that, by evidence of this *Petition*, continue to exist.

For the forgoing reasons Frontier respectfully requests that the Commission deny the *Petition*.

Respectfully submitted,

Frontier Communications Corporation

By:

/s/

Michael D. Saperstein, Jr.
Director of Federal Regulatory Affairs
Frontier Communications Corporation
2300 N St. NW, Suite 710
Washington, DC 20037
Telephone: (203) 614-4702

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